

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
) Case No.
) 5:15-CR-00319-FL-1
)
)
 ERIC MARTIN PEPKE,)
 Defendant.)

SENTENCING HEARING
BEFORE DISTRICT JUDGE LOUISE WOOD FLANAGAN
MAY 4, 2016; 1:31 P.M.
NEW BERN, NORTH CAROLINA

FOR THE GOVERNMENT:

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FOR THE DEFENDANT:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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FEDERAL OFFICIAL COURT REPORTER
413 MIDDLE STREET
NEW BERN, NC 28560

1 P R O C E E D I N G S

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3 THE COURT: Mr. Pepke, this is the time the Court has
4 set aside to sentence you for receipt of child pornography.
5 Have you reviewed the presentence report?

6 THE DEFENDANT: Excuse me, Your Honor?

7 THE COURT: Have you reviewed the presentence report?

8 THE DEFENDANT: Yes, I have, Your Honor.

9 THE COURT: Have you had enough time to talk to
10 Mr. Ross to be ready for sentencing?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Very good.

13 Counsel for the Government, with respect to the
14 offense conduct outlined in the presentence report, what
15 particularly would you draw the Court's attention to in
16 fashioning a sentence that's sufficient but not greater than
17 necessary?

18 And you can be seated.

19 THE DEFENDANT: Could you repeat that? I have a
20 cold. I'm having a hard time --21 THE COURT: We'll make an assisted listening device
22 available for you.

23 THE DEFENDANT: That would be great.

24 Oh, that's better.

25 THE COURT: Good.

1 And what would you draw the Court's attention to?

2 MS. RANDA: Yes, Your Honor. Thank you.

3 The Government would draw your attention first,
4 Your Honor, to paragraphs 7, 8 and 9 of the presentence report,
5 actually 6, 7, 8 and 9. I'd like to point out, Your Honor, the
6 statements made by the defendant in regards to his downloading
7 and receipt of child pornography.

8 The defendant, as you'll see in paragraph 7,
9 indicated that the reason for downloading child pornography was
10 that he wanted to do something evil and that he thought this
11 was the most evil thing he could come up with, and in essence
12 felt that he needed to punish society or punish other
13 individuals because he felt like he was down on his luck and
14 had received some unfair treatment, and so his decision to
15 download child pornography apparently began as an attempt to
16 get back at society, and for some reason he chose children to
17 do that with.

18 You'll also see in paragraph 6 it seems that the
19 defendant didn't really take seriously some of this behavior.
20 When agents arrived to conduct a search warrant at his house,
21 his girlfriend at the time showed up with a child she was
22 babysitting, and the defendant made a statement, "I bet you
23 think she brought that child home as a present for me."
24 And so I think the defendant didn't really take his actions
25 seriously in this case.

1 As Your Honor will see from the indictment, the
2 defendant began downloading child pornography in at least
3 2002 up until about probably a few days before the search
4 warrant was executed, so he downloaded this child pornography
5 for many, many years.

6 As you'll see in paragraphs 8 and 9, the total count
7 of images was over 21,000. He had 2,912 still images of child
8 pornography, 280 videos, which equates to over 23,912 images of
9 child pornography over that time frame, and these images
10 involved very young children, toddlers and infants, it involved
11 sadomasochistic conduct, so when the defendant makes the
12 statement that he wants to do something evil, he certainly
13 found an outlet for the evil he wanted to do.

14 He was using peer-to-peer file sharing software to
15 download this pornography, and by default that software was
16 sharing pornography with others, and while we have agreed not
17 to do an enhancement for distribution in this case because I
18 had to show there was knowing, he still was allowing other
19 people to get that child pornography from his program, and
20 I think that's important as well.

21 I'll point out to Your Honor in paragraph 13 there
22 was one restitution request made in this case, however, it was
23 withdrawn, so the Government is not seeking restitution, and in
24 paragraph 14 you'll see that there are actually about
25 2900 images and 280 videos that the defendant possessed where

1 the victims have not yet been identified, and I think that's
2 important because the most important part of this case is that
3 these are actual true child victims, these are victims that are
4 being assaulted and raped and brutally abused for the pleasure
5 of this defendant and for his entertainment and because he
6 wanted to do something, quote, unquote, evil, and I think
7 that's important because these victims do live with this abuse
8 for the rest of their lives, and as you see in paragraph 14,
9 there are multiple victims that have not even been identified
10 yet.

11 So, Your Honor, I would ask that you sentence within
12 the guideline range. I would ask for the top of the guideline
13 range, because I feel like 121 months is sufficient but not
14 greater than necessary for the purpose of the 3553(a) factors.
15 I'll also point out to Your Honor that while the defendant did
16 sign a plea agreement, there was no cooperation, the defendant
17 indicated he did not have cooperation to give, so I have not
18 filed a 5K or sought a 5K motion in this case, and I would ask
19 for a sentence at the top of the guideline range.

20 THE COURT: All right. For the defendant?

21 MR. ROSS: Thank you, Your Honor.

22 I just put up on the screen a mathematical equation,
23 I don't necessarily know if I can actually explain it, but I
24 can tell you that the final answer is 2 squared 2, which equals
25 4. That's the kind of stuff that's in Mr. Pepke's brain. He

1 is affectionally called a nerd. He can probably quote
2 Star Trek and Star Wars and comic books and mathematical
3 equations and have the common decency to make it interesting to
4 him.

5 I point that out from the beginning because the way
6 I look at Mr. Pepke and the way that others may look at
7 Mr. Pepke is that he's socially awkward. He's been socially
8 awkward for a long time. He's been reared by parents, one
9 parent who was a drama teacher and another parent who dealt
10 with electronics and recording of music and some of those odd
11 things, but they had a very bright child who was kind of a
12 lonely child, who was kind of kept inside of a box, who did not
13 have those social graces and the ability to, at times, when you
14 think of something in your head, not to say it out loud, and
15 that is directly related and directly reflected in the
16 presentence report when you hear the language which the
17 Government talks about where he says to the officers who are
18 coming there -- you got to remember, this is the first time
19 Mr. Pepke has ever been arrested. He says the most odd thing
20 in the world: I bet you thought she was bringing this for me.

21 That is not something which people say who have the
22 social graces and the normative things which we expect to have
23 in Mr. Pepke. I mean, this is something he actually said out
24 loud. I wouldn't have said it. But there's actually no
25 evidence whatsoever that he's ever touched, thought about,

1 sexually aroused by children.

2 I mean, there's ways in which I could talk to this
3 Court about how this bright man at some point -- who got into
4 MIT and took classes there at some point in his life, that this
5 could have been just a situation of him just trying to
6 understand it, but it's hard when it comes to children, it's
7 hard when it comes to videos involving people.

8 What is sufficient and not greater than necessary for
9 Mr. Pepke, for a person who has never been arrested before in
10 his life, is not 97 to 121 months. Surely we can get -- and I
11 don't mean we. Society. The collective we. We can get
12 everything by something less than 97 months, something less
13 than 97 months, and it could cover issues of hopefully -- maybe
14 he might be able to teach some classes while he's in the Bureau
15 of Prisons, maybe he might be able to get some treatment that
16 might deal with his mental health, and it's obvious things that
17 he has with mental health, he has bipolar, he has other issues.
18 He also has medical issues that deal with his diabetes and
19 everything else.

20 So what I'm asking this Court to seriously consider
21 is, one, a recommendation to an FMC; two, to allow him to get
22 mental health treatment; three, I think for all the reasons
23 under 3553(a), I believe there are several reasons why he could
24 get a sentence that's lower than 97 months that would be
25 sufficient but not greater than necessary.

1 Also the other thing that Mr. Pepke wants me to
2 explain to this Court is this hasn't been going on since 2002,
3 and he could probably explain it a lot better than I can.
4 He can explain all the addresses that the computer says and the
5 dates and how they're downloaded, but it has not happened since
6 2002, and as the Court well knows, that he did not try to trade
7 in this, and he is 55 years old and he's looking forward to
8 getting on with his life.

9 Thank you.

10 THE COURT: So you say it hasn't gone on since 2002?
11 What is the thrust of the number 2002?

12 MR. ROSS: The Government said that he had been
13 downloading since December of 2002. I believe some of the
14 dates on some of the files may have gone back that far, but
15 based on talking to my client, he had not been downloading
16 since 2002.

17 THE COURT: Okay. Well, I'm familiar with the
18 offense conduct as set forth in the presentence report, the
19 defendant's lack of a scorable criminal history, his family
20 background is given to the Court and he has provided
21 information concerning what he describes as a terrible
22 childhood.

23 His health condition is described, his mental health
24 and emotional health are also highlighted. He has gained very
25 remunerative employment, making in excess of \$100,000 a year at

1 his last place of employment as a software architect.

2 I'm familiar with the offense conduct and its
3 guideline scoring, which, there being no dispute, puts the
4 defendant with a total offense level of a 30, so as highlighted
5 in the arguments of counsel, the advice the Court receives is a
6 sentence of between 97 to 121 months. Of course I'm not bound
7 by that, the Court has a great deal of discretion, but that is
8 the advice I receive. He could be in custody for up to
9 20 years and he could be supervised for the rest of his life.
10 He's not eligible for probation. The fine could be as much as
11 a quarter of a million dollars, though the guidelines suggest a
12 range between 15,000 and 150,000.

13 Mr. Pepke, is there anything you want to say?

14 THE DEFENDANT: The only thing I have to say really
15 is that I'm extremely remorseful about this behavior, which,
16 as my counsel said, has not been going on very long, and will
17 certainly have no desire to do anything like this in the
18 future.

19 THE COURT: Okay. Does the Government want to
20 respond further?

21 MS. RANDA: No, Your Honor. Thank you.

22 THE COURT: Have I heard you, Mr. Ross, fully?

23 MR. ROSS: Yes, Your Honor.

24 THE COURT: I consider the advice of the guidelines
25 specifically and generally and the factors set forth in

1 18 United States Code Section 3553. It's my determination that
2 a sentence in the guideline range does accomplish the purposes
3 of sentencing, but I don't believe it's a sentence at the high
4 end of the range as urged by the Government, I think a sentence
5 at the bottom of the range, a sentence of 97 months
6 accomplishes the purposes of sentencing, and that is the
7 Court's sentence.

8 The defendant will be supervised for the rest of his
9 life. He'll owe a \$100 special assessment. If you break any
10 law, Federal, State or local, if you possess a weapon or drugs
11 illegally, you'll be in violation of the Court's judgment and
12 you could go back to prison with respect to the instant
13 offense.

14 Now, there are a number of other conditions that are
15 highlighted by the probation office. First and foremost, and I
16 adopt these conditions, you're going to participate in a mental
17 health treatment program, you're going to consent to
18 warrantless searches, cooperate in the collection of DNA,
19 submit to searches of your person, your house, your media
20 devices at any time, with or without a warrant. You'll submit
21 to a psychosexual evaluation, you'll participate in a
22 sex offender treatment program, you'll submit to physiological
23 testing.

24 You're not going to possess anything that could be
25 described as child pornography or simulated child pornography.

1 You'll comply with the requirements of the Sex Offender
2 Registration and Notification Act. You're not going to buy or
3 possess a computer unless the probation office approves, and
4 you're not going to use any type of technology that the
5 probation officer prohibits. You will get searched regularly
6 by your probation officer or his or her designee, and these
7 examinations, among other things, may include the removal of
8 devices from your possession for the purpose of conducting a
9 thorough inspection.

10 You'll consent to installation of home monitoring
11 systems or software that will allow the probation officer to
12 monitor computer use, and you'll pay the cost of that
13 monitoring. You won't use or possess or control any
14 computer-based counterforensic tool that could defeat the
15 Government's efforts to continue to monitor your progress and
16 your compliance. You won't have any social networking accounts
17 without the approval of the probation officer, and you won't be
18 employed as a volunteer in any activity that involves children
19 under the age of 18 without written permission from the
20 probation office, and you can't be engaged in a position that
21 involves being in a position of trust exercising authority over
22 any person under the age of 18.

23 I'm suspending the drug testing condition. There's a
24 \$100 special assessment. I'm not going to impose a fine. You
25 don't have the ability to pay a fine. Restitution in this case

1 is waived.

2 Mr. Ross, before I impose this finally, are there any
3 other requests or conditions? I believe you did say a medical
4 facility, and I will recommend that. I will recommend mental
5 health treatment and I will recommend that the Bureau of
6 Prisons undertake a comprehensive mental health assessment of
7 your client to determine what mental health treatment he may
8 benefit from. I'll recommend him for further educational and
9 vocational training. Is there anything further?

10 MR. ROSS: No, Your Honor.

11 THE COURT: Anything from the Government?

12 MS. RANDA: No, Your Honor. Thank you.

13 THE COURT: Anything further from you, Mr. Pepke?

14 MR. ROSS: No, Your Honor.

15 THE COURT: All right. Now, you can appeal if you
16 believe there's something very wrong with the sentence or with
17 your conviction, but you do need to move quickly, a defendant
18 usually only has 14 days within which to appeal. There are
19 waivers in your appeal document, in your documentation, your
20 plea in this case, and these waivers are generally enforceable,
21 but if you believe they're not, you can present your theory to
22 the Court above, but as mentioned, you must move quickly, a
23 defendant usually only has 14 days to do that.

24 Any questions, sir, about the judgment or your appeal
25 rights?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: You'll get credit for time served towards
3 the sentence today. Thank you.

4 Thank you, Counsel.

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6 (Proceedings concluded at 1:47 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript of proceedings taken in a sentencing hearing in the United States District Court is a true and accurate transcript of the proceedings taken by me in machine shorthand and transcribed by computer under my supervision, this the 14th day of July, 2016.

/S/ DAVID J. COLLIER

DAVID J. COLLIER

OFFICIAL COURT REPORTER